

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO *ex rel.*
State Engineer, *et al.*,

Plaintiffs,

v.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941 MV/LFG
Rio Chama Adjudication
Section 1, Mainstream

Acequia de Chamita
Subfile No. 267

ORDER TO SHOW CAUSE

THIS MATTER comes before the Court on David Ortiz' Written Objections to Magistrate Judge's Findings and Recommended Disposition.¹ [Doc. 10959].

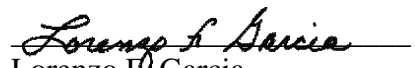
After holding an evidentiary hearing, the Court entered its Magistrate Judge's Findings and Recommended Disposition on August 2, 2013, regarding Defendants David M. Ortiz and Cecilia S. Ortiz' water right on the Acequia de Chamita under Subfile No. 267. [Doc. 10939]. On August 16, 2013, Mr. Ortiz filed a motion asking the Court to provide him with transcripts of the hearing and a 30-day extension of time in which to file his objections to the Magistrate Judge's Findings and Recommended Disposition. [Doc. 10952]. The Court informed Mr. Ortiz that it does not provide transcripts to litigants, informed him that he may purchase transcripts from the Court Reporters, provided him with the names and phone numbers of the Court Reporters, and granted him an additional 15 days in which to file his objections. [Doc. 10956].

¹On October 1, 2013, the Honorable M. Christina Armijo, Chief United States Judge for the District of New Mexico ordered that all cases within the District of New Mexico wherein the United States is a party are temporarily stayed. [Case 1:13-mc-00040 Doc. 2]. The Order for a Temporary Stay allows for exceptions as the presiding judge deems appropriate. Because this matter relates only to Mr. Ortiz' objections to the Magistrate Judge's Findings and Recommended Disposition and does not involve the United States, the Court deems entry of this Order to Show Cause, Mr. Ortiz' response and any response by the State of New Mexico as appropriate exceptions to the Order for a Temporary Stay.

Mr. Ortiz timely filed his objections. [Doc. 10959]. When reviewing objections to a Magistrate Judge's factual findings based on conflicting testimony or evidence, the District Judge must "consider[] the actual testimony, and not merely [review] the magistrate[judge's] report and recommendation" which requires that the District Judge "must, at a minimum, listen to a tape recording or read a transcript of the evidentiary hearing." Gee v. Estes, 829 F.2d 1005, 1009 (10th Cir. 1987). Rule 72(b)(2) of the Federal Rules of Civil Procedure provides: "Unless the district judge orders otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate judge considers sufficient." Mr. Ortiz did not arrange for transcribing the record.

Mr. Ortiz shall, within 15 days of entry of this Order, file a response showing cause why the Court should not strike his objections based on his failure to comply with Rule 72(b)(2) of the Federal Rules of Civil Procedure. Failure to file a timely response shall result in the Court striking Mr. Ortiz' objections.

IT IS SO ORDERED.


Lorenzo F. Garcia
United States Magistrate Judge